

South Carolina Wetlands Stakeholders Process



Fall 2004



SOUTH CAROLINA WETLANDS STAKEHOLDERS PROCESS, FALL 2004

BACKGROUND

In January 2001, a Supreme Court decision, Solid Waste Agency of Northern Cook County (SWANCC), effectively removed isolated wetlands from jurisdiction of the Federal Clean Water Act. The premise was that the U.S. Army Corps of Engineers (Corps) could no longer use the “migratory bird rule” to justify connection of an isolated water to a navigable water to claim jurisdiction. Instead, there needed to be a visible, surface water connection to a navigable water. This meant there was no requirement for a 404 permit from the Corps and the prerequisite 401 Water Quality Certification and Coastal Zone Consistency Certification from the South Carolina Department of Health and Environmental Control (SCDHEC). An important note in this decision is that it affirmed that in the absence of federal government jurisdiction, isolated wetlands should be regulated by states.

Some states already had state wetlands permitting programs in place, some states have passed state wetlands protection statutes since SWANCC, and some states have amended their 401 Water Quality Certification program to ensure isolated wetlands continue to receive protection.

In 2003, SCDHEC proposed amendments to its Section 401 Water Quality Certification Regulations to provide a permitting mechanism to address the gap in wetlands regulation created by SWANCC. In 2004, the South Carolina Realtors Association drafted a new wetlands statute for South Carolina to regulate isolated wetlands. During the 2004 legislative session in South Carolina, neither the amendments to SCDHEC’s Water Quality Certification regulations nor the wetlands statute developed by the South Carolina Realtors Association were approved. Some legislators suggested meetings before the 2005 legislative session to obtain input on how to protect isolated wetlands.

STAKEHOLDER PROCESS

In September, October, and November of 2004, SCDHEC staff conducted a series of five regional meetings to obtain stakeholder input as to how isolated wetlands should be regulated in South Carolina. Meetings were held in Myrtle Beach, Columbia, Charleston, Beaufort, and Greenville. Because the Beaufort meeting was scheduled after the other four and the date for the Greenville meeting was changed, two separate invitations were issued. These are presented in Appendix 1. The notices of the meetings were mailed via U. S. Post and e-mail to people who had registered at previous SCDHEC meetings pertaining to wetlands. We also mailed the notice to a list of consultants who work with wetlands, and the notices were posted prominently on SCDHEC’s web page.

Since previous legislative attempts had failed, the process started with a clean slate with regard to specific regulatory or statutory language. SCDHEC staff reviewed the prior regulations and legislation as well as comments and discussion pertaining to them. We identified twelve major topics that were addressed in the previous regulations and legislation. Under each topic, we

identified major points for consideration. Naturally, some of these points conflict because there are different opinions on how each topic should be addressed.

The twelve broad issues for consideration in wetlands legislation for South Carolina were:

- = Jurisdiction
- = Delineation
- = Definitions
- = Activities Subject to Regulation
- = Exemptions
- = Threshold Acreage of Wetlands Subject to Regulation
- = Mitigation
- = Wetland Master Planning
- = Permit Process
- = Time Frames
- = Review Criteria
- = Compliance and Enforcement

We started the discussion at the first stakeholder meeting using the twelve major topics and prior specific input. At each meeting, we added new points that were offered for consideration.

The intent of the meetings was to identify new issues or alternatives to the issues already presented. The intent was not to transcribe the meetings verbatim. We also accepted written comments in addition to the input received from discussions at the five meetings.

To remove perceived bias from the process, Nathan Strong from the Budget and Control Board's Office of Human Resources facilitated four of the sessions. His colleague facilitated the meeting in Charleston. The facilitator framed the issues and encouraged input and suggestions on the various issues regarding isolated wetlands. SCDHEC staff participated in the meetings by listening, learning, taking notes, and answering technical questions.

In order to keep stakeholders and meeting participants involved throughout the process, SCDHEC updated the input received at each meeting in a master document and posted it on the SCDHEC web page. We also provided the updated document via e-mail to those who had provided e-mail addresses at the meetings.

This document will be provided to the SCDHEC Commissioner, Board, and any parties who have an interest in drafting wetlands legislation for South Carolina.

PARTICIPATION

All five meetings were well attended with multiple views on the issues represented. The numbers below reflect the people who signed in at each meeting; however, there were more in attendance than registered at each meeting.

Myrtle Beach – 55
Columbia – 54
Charleston – 73
Beaufort - 28
Greenville - 23

Appendix 2 contains names and affiliations from the sign in sheets.
Appendix 3 presents the input received by meeting location.

WHAT WE HEARD

We started with an initial list of topics and issues and added to it at each meeting. The font color is different for each meeting only for purposes of identifying at which meeting the specific input was received. If a comment or issue was essentially the same as one already presented, it was not added again to the document. **We have also highlighted in yellow suggestions on issues that we heard repeatedly.** These highlighted suggestions could form the basis of recommendations for legislation.

The font colors below represent:

Starting document

Input from the Myrtle Beach meeting

Input from the Columbia meeting

Input from the Charleston meeting

Input from the Beaufort meeting

Input from the Greenville meeting

Jurisdiction

- All waters
- Isolated waters only
- **Waters not subject to jurisdiction of the Corps of Engineers – Corps is changing/may change adjacency call regarding isolated vs. contiguous**
- Not every mudhole
- Nothing beyond Corps' jurisdiction
- **Nothing manmade – including impoundments, ditches, lagoons, and borrow pits constructed from high ground unless they have become naturalized**
- **Anything that meets the definition according to the Corps' manual**
- **If it has functions that serve human needs**
- **If it has functions that serve natural systems**
- **Jurisdiction should be at the State level, not at local level**
- **Everything manmade**
- **Local level jurisdiction should be allowed - similar to delegated review**
- **Allow local governments to be more stringent**
- **Jurisdiction should be dependent upon classification system – jurisdiction taken on best/most valuable and not taken on inferior/least valuable wetlands**

Delineation

- Corps of Engineers
- Consultants with Corps verification
- DHEC
- Consultants with DHEC verification
- Corps delineation with DHEC verification/amendment
- There should be a standard of training for anyone doing delineation - require certification of trained delineators
- Delineation should be science-based
- Keep list of fraudulent or inaccurate delineators and scientists
- Include quality control /assurance – maintain some level of ground truthing
- State does not need multiple layers of agencies doing delineations – if the Corps continues to do delineations, the State should not
- Allow for appeal of delineation
- Concern that Corps may not require delineation and platting of isolated wetlands

Definitions

- Wetlands - use the federal (Corps) definition and rely on their delineation methodology
- Clarify that Pollution Control Act definition of waters included wetlands
- Mitigation - use the federal definition which includes avoidance and minimization
- Consider term other than isolated, e.g., nonjurisdictional for the federal program but would be jurisdictional to the State
- Define State jurisdictional wetlands
- Use term geographically isolated instead of isolated wetlands
- Define BMPs such as detention ponds which may be water features but are not jurisdictional
- Anything delineated as a wetland should be regulated
- Need to define certain isolated waters that may not be wetlands
- Need to define any term used that is not defined elsewhere is commonly used regulations
- Need to define any term not specifically defined by the Corps – if the Corps has a definition, use it

Activities Subject to Regulation

- Any activity (except those exempt) which can alter waters or wetlands
- Placement of dredged or fill material only (currently regulated by Corps)
- Discharges into waters of the State
- Forestry activities unless have appropriate controls (Best Management Practices)
- Case-by-case based on function of the wetland
- Include drainage and ditching
- Case-by-case based on degree of impact
- Recognize value of nationwide permits

- Any activity ever regulated by the Corps per statute, regulation, or guidance
- Government takings of property and buffer areas
- Consider quality/value/function of wetlands in regulatory scheme
- Balance economic value of project with ecological value of wetlands

Exemptions

- Identical to federal exemptions in Section 404 of the Clean Water Act
- Selected activities in addition to the federal exemptions
- Small wetlands
- Everything
- Maintenance of drainage ditches – and stormwater ponds
- Forestry with proper BMPs
- Activities regulated by the Corps if jurisdiction extends to all waters
- Exemptions specified in nationwide permits
- None specified, but address in permit review or general permit
- No exemptions that destroy whole class of wetlands
- BMPs
- BMPs adjusted to where they protect biota
- DOT projects
- No DOT projects
- Improvements for waterfowl habitat – provide access also
- Small recreational ponds - < 1 acre
- Minimum stream length – perhaps 50 feet
- Time-based exemptions – e.g. remove roads when forestry, mining, or construction project is completed

Threshold Acreage of Wetlands Subject to Regulation

- None
- None, but address in a General Permit
- 0.1 acre
- 0.5 acre
- 1 acre
- Greater than 1 acre
- Set percentage of total wetlands on project site
- 5 acres
- Functions and values should be addressed – in context of landscape & watershed
- Even with threshold, if high quality allow mitigation credit for not altering
- Must have threshold since classification system won't work
- Thresholds federal program uses in nationwide permit
- Review recommendations in Ocean report related to percent impervious surface in a watershed
- Combination of general permit and assessment of functions and values

- Different thresholds for different parts of the State (need a lower threshold in the coastal areas where wetlands are more abundant)
- A specified threshold of when a permit is required is necessary for consistency – received suggestion that no permit should be required for impacts below 0.5 acre
- Even with a permit threshold there was acceptance by consultants to provide mitigation for impacts below the permit threshold but above a mitigation threshold – received suggestion that anything above 0.1 acre should have compensatory mitigation
- Don't use any acreage threshold; have enough mitigation banks to easily compensate for any and all losses

Mitigation

- Required for any impacts including General Permits
- Not required for General Permits
- Required for impacts above a certain acreage threshold – 0.1, 0.25 or 0.50 acre
- Sequencing (avoidance and minimization before compensation) required
- Accept money as compensation
- Follow the Interagency (Corps) Standard Operating Procedures (SOP)
- Follow a simplified SOP
- Allow for use of approved mitigation banks
- Don't consider constructed wetlands
- Consider constructed wetlands
- All mitigation should be in-kind
- Don't consider mitigation as a form of preservation
- Require verification that mitigation was performed and successful long term
- Required for permanent, but not temporary, impacts - important for linear projects
- Enhancement of natural wetlands
- Compensate landowner monetarily
- Evaluate mitigation on a landscape/watershed basis as opposed to project-by-project, but with consideration of individual property rights
- Allow use of buffers which may be required by local jurisdiction
- If follow Corps' SOP, allow waiver of requirement for 25% total mitigation through restoration or creation/enhancement other than buffer enhancement
- Mitigation should not result in a net loss of wetlands
- Consider preservation as compensatory mitigation provided there are "significant" buffers
- Mitigation banks may be good for some parts of State, but upstate doesn't have any nor are there many good sites for banks (areas needing restoration or enhancement)
- Use pre-law mine areas for wetlands mitigation
- Allow water quality wetlands basins as mitigation
- Include small adjacent wetlands as part of stream bank mitigation bank and use for isolated wetlands, too
- No net loss is hard for upstate; consider other environmental remediation in lieu of wetlands mitigation

Wetland Master Planning

- Wetlands of a minimum acreage are allowed to be altered without mitigation
- Protection and buffering of remaining wetlands on site is only required mitigation
- Sequencing and normal mitigation procedures used but total mitigation required is reduced
- Must consider functional assessment
- Mitigation for any impacts
- Should be required of any project
- Opportunity to implement threshold based on percentage of wetlands on site
- Consider on a watershed basis
- Must include protection of small isolated wetlands
- Should begin at local level
- Height and density variation in developed areas should be allowed by local governments to minimize encroachment into wetlands
- Variation in wetlands impacts should be allowed if necessary for affordable housing projects
- Restrictive covenants should provide contingencies for future roads or utilities that may not be anticipated at the time of permitting
- Experience with new property owner upon transfer of property that was master planned taking exception with the amount of mitigation required

Permit Process

- Individual permits only
- General permits in addition to individual permits
- Joint process with other DHEC permits – simultaneous (may not be possible with programs with delegated review)
- Public Notice of application – minimum 30 day notice
- Notice of Proposed Decision
- Final Permit only with no other public notice
- Appeal process through Administrative Law Judge
- Time frame for agency to act
 - 45 – 60 day turnaround
- Fast track simplified projects or minimal impacts
- Different processes for majors and minors
- General permit for small/common impacts
- Notification to permitting agency for unregulated projects
- Incorporate mediation into process prior to formal appeal
- Put as much specifics into statute/regulation as possible to offer certainty to permittees
- Have a different permitting process for wetlands in urban growth areas than rural areas
- No difference in permitting process at different project locations
- Current process in the coastal zone works (reference to stormwater permits) – any new program should apply only to areas outside of the coastal zone

- Need consistency with Corps and State on NWP process to minimize permitting burden on applicant
- Multiple agency process is confusing; need timeliness and need to consider funding for agencies
- Permitting office in upstate would be beneficial
- Different rules for different geographic regions

Time Frames

- Deemed issued if set time frame is not met
- Return fee if set time frame is not met
- Do not include time applicant is preparing supplemental information in time
- Alternate action on permit if time frame not met
- Contract review to outside parties if necessary to meet time frames
- Early review for administrative completeness
- Allow PE to “self issue” - but only with clear and specific performance criteria
- Don’t deem issued if time frame not met
- Combination of early review and deemed issued if set time frame not met
- Certainty in time frames is important
- Consistency in time frames between permit reviews when there are multiple permits for one activity
- Ensure Agency has sufficient resources to meet specified time frames
- Time frames should be different depending upon complexity of the projects
- Suggest 15-30 days for administrative completeness review - use checklist to ensure completeness and can’t go back. No moving targets!
- Suggest maximum 60 days for technical review
- Suggestion that thirty days is reasonable
- To minimize processing delays, consolidate comments and deficiencies so applicant can address all at one time
- Some think that development world would pay for express service

Review Criteria

- Sequencing
- Alternatives analysis
- Public need
- Consider watershed impact
- Should mirror 401 criteria
- Specified denial criteria
- Heightened mitigation for after-the-fact permits
- Economic analysis
- Simplified review
- Consider alternatives to sequencing – some consultants prefer more flexibility than 404(b)(1) guidelines

- Consider threatened and endangered species but specify whether this would be federal only or include state species of concern
- Consider cultural resources
- Focus review criteria on water issues – what is being done now – do not expand scope of review

Compliance and Enforcement

- Allow for inspections
- Provide for penalties
- Provisions same as Pollution Control Act
- Provisions different from PCA
- Contain citizen suit provision – any citizen
- Citizen suit with standing
- Citizen suits should be brought only by affected parties
- Citizen suits should have time limit applicability
- Need to penalize consultants for poor performance
- No compliance/enforcement
- No criminal penalties
- Public access to compliance/enforcement records
- Require permittee accountability through recordkeeping and reporting
- Require bonding
- Should include compliance assistance
- Citizen suits should have anti-frivolous provision
- Compliance would be better if rules were more simple, easier to understand, and more regulatory presence in all areas of State
- Cost of not complying should be greater than the cost of complying

Other issues:

- Incentives to permittees to avoid and minimize impacts
- How to recognize and manage credits
- Budget concerns – Can the State afford this?
- Cost to society for lost wetlands
- Provide as much consistency as possible with existing programs
- Local zoning and other local issues “force” developers into wetlands; DHEC should work with local governments to make their regulations and ordinances mesh better with environmental rules

SUMMARY

The twelve issues presented for discussion naturally had some overlap, but seemed to cover all topics that would be included in wetlands legislation. Input that did not fit cleanly into one of these issues was added at the end to a grouping entitled “Other Issues.” The views on many of

the issues were polarized and extreme, as we had expected. As an example, some suggested that nothing should be regulated and others suggested that everything should be regulated. Other examples can be seen in the input above. We also received input on things, such as local zoning and compensation for takings, that would likely not be within the scope of State wetlands legislation. We heard considerable discussion about the existing Corps of Engineers permitting process, which also would not be addressed in State wetlands legislation.

Although there certainly was not complete agreement on many of the issues, we did hear several things repeatedly that we think should receive strong consideration in any type of wetlands legislation, either regulation or statute. Most of those are highlighted above but will be summarized briefly here.

- = Limit the jurisdiction of a State wetlands program to those areas not presently regulated by the Corps of Engineers.
- = The State should regulate only the deposition of fill material – as currently regulated by the Corps. The same activities that are exempt from the Federal program should be exempt from a State program.
- = The process and procedures for wetlands delineation should be the same as it is now. The Corps, or consultants with Corps' verification, should provide delineations for any wetlands subject to State jurisdiction.
- = The current Federal definitions should be used where possible. That should include the definitions for wetlands and mitigation in addition to other well-known terms.
- = There should be a threshold for wetlands not subject to regulation. The most commonly heard values were 0.1 acre, 0.5 acre, or a specified percentage of the total wetlands on any given project site.
- = Likewise there should be a threshold for the amount of fill that requires compensatory mitigation. Also, there is favor for using mitigation banks.
- = Even though wetland master planning is currently used in the coastal zone, there was not a lot of interest in the concept.
- = The administrative process for issuing permits should be a joint process with other permits where possible. There should be specified time frames for the permitting agency to act for both administrative and technical review. There should be a general permit process or some type of fast track for simplified projects or minimal impacts.
- = There is an understanding of the current administrative process and technical review criteria for the 401 Water Quality Certification program. There were comments made that the process for a State wetlands permit should mirror that process to the extent it can. Additionally, there should be as much consistency as possible with any existing regulatory programs.
- = State wetlands legislation should allow for inspections, provide for penalties, and allow citizen suits.
- = Any State wetlands program should have certainty and timeliness. The process must be understandable and consistent.

Appendix 1

Invitations to Wetlands Stakeholder Meetings



Wetlands Meetings

The South Carolina Department of Health and Environmental Control will be conducting four meetings to discuss wetlands. We want to obtain your input on issues you think should be addressed in wetlands legislation for South Carolina.

As you know, isolated wetlands were removed from federal jurisdiction by a US Supreme Court decision in 2001. Attempts to address wetlands protection were unsuccessful during the 2004 South Carolina legislative session. Because of the great interest as to how best to protect isolated wetlands, SCDHEC is conducting these stakeholder meetings to receive public input on this issue. This input will be considered in drafting future legislation.

We have planned four meetings for your convenience. The issues presented for discussion will be similar at each of the meetings. You are invited to attend one or all of these meetings.

September 23, 2004

2:00 pm – 5:00 pm
Horry-Georgetown Technical College
Grand Strand Campus
743 Hemlock Avenue (Old MB AFB site)
Myrtle Beach, SC

September 28, 2004

2:00 pm – 5:00 pm
Municipal Association of South Carolina
1411 Gervais Street
Columbia, SC

September 29, 2004

2:00 pm – 5:00 pm
Charleston County Public Library
68 Calhoun Street
Charleston, SC

October 12, 2004

2:00 pm – 5:00 pm
Greenville County Health Department
200 University Ridge
Greenville, SC

If you have any questions prior to these meetings please feel free to contact Robin Stephens with SCDHEC Environmental Quality Control Administration at stephers@dhec.sc.gov.

Please come ready to have an open discussion on wetlands protection. We look forward to seeing you and hearing your thoughts at one of these meetings.



Wetlands Meetings

You were recently notified that the South Carolina Department of Health and Environmental Control will be conducting meetings to discuss wetlands. Upon request, we have added another meeting for the Beaufort-Jasper area, which requires us to reschedule the Greenville meeting. Below, please find the revised dates and locations for the meetings. Those meetings that have been changed are marked with an asterisk. **

The Department would like to obtain your input on issues you think should be addressed in wetlands legislation for South Carolina. You are invited to attend one or all of these meetings.

September 23, 2004

2:00 pm – 5:00 pm
Horry-Georgetown Technical College
Grand Strand Campus – Bldg. 600
743 Hemlock Avenue (Old MB AFB site)
Myrtle Beach, SC

September 28, 2004

2:00 pm – 5:00 pm
Municipal Association of South Carolina
1411 Gervais Street
Columbia, SC

September 29, 2004

2:00 pm – 5:00 pm
Charleston County Public Library
68 Calhoun Street
Charleston, SC

October 12, 2004 **

2:00 pm – 5:00 pm
Beaufort Jasper Academy for Career Excellence
80 Lowcountry Drive
Hwy. 170/462
Ridgeland, SC

November 4, 2004 **

2:00 pm – 5:00 pm
Greenville County Health Department
200 University Ridge
Greenville, SC

If you have any questions prior to these meetings, please feel free to contact Robin Stephens with SCDHEC Environmental Quality Control Administration at stephers@dhec.sc.gov.

Please come ready to have an open discussion on wetlands protection. We look forward to seeing you and hearing your thoughts at one of these meetings.

Appendix 2

Attendees at Wetlands Stakeholder Meetings

Myrtle Beach, 9/23/2004
Columbia, 9/28/2004
Charleston, 9/29/2004
Beaufort, 10/12/2004
Greenville, 11/4/2004

MEETING LOCATION: MYRTLE BEACH	
NAME	AFFILIATION
BOB BELLAMY	
BILLY WITHERSPOON	
PAM BENNETT	SC TOURISM COUNCIL
LAWRENCE LANGDALE	
AMANDA HARDESTY	
MATT MAXWELL	
LAURA STASAVICH	
NICK TUCKER	
JOYCE PAWLEY	
CLAUDE & JENNY ALTMAN	
JIM WISEMAN	
STEVE ALGER	
MICHAEL DAY	
TOMMY SQUIRES	
BOBBY PAGE	
LORRIE LALIBERTE	
DERITH HIERS	
WENDY MCINTYRE	SCDHEC WACCAMAW
BENJY HARDEE	HARDEE ENVIRONMENTAL
SIG BUSTER, III	
MARGUERITE MCCLAM	
BILL ASTON	
JACK PEACHY	
MARSHALL C SMITH	
SHARON GILMAN	
RON HEIDEBRINK	
DON HELMS	
ED	
TRACY EDGE	
DAVID LEE	WAKE STONE CORP
JOHN BRUBAKER	
AMANDA CARREL	
MIKE WOOTEN	DDC ENGINEERS INC
STEPHANIE BEARD	
BOBBY PAST	
RON H TATA	
TONY COX	
LARRY BRATCHER	
JOHN R	
STEVE POWELL	
TERRY WATSON	
RANDY WALLACE	
AMY ARMSTRONG	
PHIL SMITH	
ROB HUFF	
JOHN T JAMISON	
TOM GARIGEN	
BOYD HOLT	
CARLISLE DAWSEY	
TAMERA BERGSTROM	
ADAM BOCKHORST	
JEFF POLLACK	
JON TAYLOR	
BRETT PERRY	
BREE YEDNOCK	

MEETING LOCATION: COLUMBIA	
NAME	AFFILIATION
DALE BRANHAM	
JOHN NEWMAN	RICHLAND CO PLANNING
GARY CANNON	
FRED TAYLOR	SCDHEC
GENE EDWARDS	TOWN OF LEXINGTON SC
CHRIS LAKE	
DAVID CHRISTMAS	
BOB GUILD	
BOB WRIGHT	SCANA
RON AHLE	DNR
CHRISTIE RENKEN	SCCCL
ANGELA VINEY	
JOHN BRUBAKER	
HARRY WALSH	
TED BACH	
DEE BENNETT	
MARGUERITE MCCLAM	
DAVID SCOTT	
BETSIE ROTHERMEL	
DAVID HADDON	
DARRYL JONES	
MELVIN STROBLE	
MARK NIX	
JULIAN BARTON	
RONNIE CROMER	
DAVID (ROCK) LUCAS	
MARK SWEATMAN	
OTIS RAWL	
DARRELL SHIER	
VERNON OSTEEN	WSRC
CHRIS DAVES	
TOM PATTON	
MATT WAHL	
CHRIS SMITH	MASC
BILL FLOWERS	
RICHARD DAVIS	
BAYLEN MOORE	
JEANELLE MCCAIN	
KIM VARNADOE	
ELLEN NOBLES	SC FARM BUREAU
BLAN HOLMAN	
SAM TEMPLETON	CITY OF COLUMBIA - DEPT OF ENGINEERING
DELL ISHAM	SIERRA CLUB
ALTON BOOZER	SCDHEC
JOHN HURLEBAUS	FOREST RESOURCES
TONY BEBBER	SCPRT
TOM MARGLE	THE VILLAGE
AMY BENNETT	SCDHEC
LYNN SHEALY	
ABIGAIL FERRANCE	CONGAREE LAND TRUST
GUY SABIN	SC FORESTRY ASSN
SARA BAZEMORE	
DAVID CADDELL	CITY OF NORTH AUGUSTA
MICHAEL DEY	
CODY LENHARDT	

MEETING LOCATION:	CHARLESTON
NAME	AFFILIATION
ANDY HARRISON	
WILLIAM D ANDERSON	
MARIANNE BURKE	
KAREN JOHNSON	
JANICE OLOUGHLIN	
KEN E NAGEL	
NANCY VINSON	
AMY HORWITZ	
JENNIE SHERRY-LINDER	
LYDIA JOHNSON	
JEAN EVERETT	
NICK KREMYDAS	
TITA MASSIE	
DAVID EVANS	
KAM DIANA CONNOLLY	
ANNETTE GODOW	
MARIAN BRAILSFORD	
NICK ROARK	ECOLOGICAL ASSOC INC
W TONY THOMAS	
ROBERT CRAWFORD	
RICK MEADOWS	
D REID WISEMAN	
JEAN DEMAURO	
NORM SHEA	
DIANE LAURITSEN	
CHUCK JARMAN	PUBLIC WORKS DEPT
ELLIOTT LOCKLAIR	ASHLEY ENGINEER & SURVEY
KERRY JACQUES	EXT REALTY GROUP
STEVE JOHNSON	DAVIS & FLOYD ENGINEERING
JOHN THURMES	
LIBBY SMITH	
JOHNBRUBAKER	
WANNETTY MALLETT	CITY OF N CHARLESTON
EDWARD GUINN JR	THOMAS & HUTTON ENG CO
CHRIS CORLSTEN	CHARLESTON COUNTY
JEFF COOK	SCDHEC - TRIDENT EQC
RUTHIE SMYTHE	
JACK SMITH	
KEVIN MITCHELL	
BILL REASONOVER	
DEVENDRA AMATYA	USDA FOREST SERVICE
DAN PENNICK	CHARLESTON CO PLANNING DEPT
JIMMY CARROLL	CHARLESTON TRIDENT ASSOC OF REALTORS
JACK WALKER	GENERAL ENGINEERING
CASHION DROLET	CHARLESTON TRIDENT ASSOC OF REALTORS
THOMAS EVANS	SC LANDOWNERS ASSOC
JOHN TEMPLETON	SC LANDOWNERS ASSOC
CHUCK BENNETT	
BILL BONDURANT	
DAVID TEAGUE	
JOHN M SETTLE	
DENISE CREED	
DAN TITCHCOCK	SC SEAG GRANT EXT

NAME	AFFILIATION
ALAN LEWITUS	
DONALD M OLSON	
JOEL E ROGERS	
JAMES CUBIE	
KATHERINE COSULICH	
CRAIG PAWLYK	
CHRIS HOLMES	
ANDY BRACK	
ROSS NELSON	
MIKE MURPHREE	
ROB MIKELL	
HILLARY REPIK	
TIMOTHY CALLAHAN	
RACHAEL THORN	
PRESTON HIPPI	
BOB KING	SCDHEC - EQC ADMIN
WAYNE FANNING	SC ASSOC REALTORS
ROBERT PRATT	
BLAN HOLMAN	
NANCY J DEMERELL	

MEETING LOCATION: BEAUFORT	
NAME	AFFILIATION
NANCY SCHILLING	
ROBERT MCEWAN	
MARSHALL STONE	
BOB EPPINETTE	
PHIL SMITH	
HEATHER LANDRY	
JIM GENTRY	C/O WARD EDWARDS
KIM BOYMILLER	
CHRISTINE TODD	
JESSICA FLATMANN	
GEORDIE MADLINGER	
SALLY L KREBS	
ASHER HOWELL	
ERIC MCCLANAHAN	
JOE WHETSTONE	
TOM BARNWELL	
BILL HODGINS	
JOHN BRUBAKER	
DAVID PAYNE	
MIKE	
JOHN HALLOWAY	BEAUFORT CO PLANNING DEPT
BILL STANLEY	ISLAND CONSTRUCTION CO INC
C LEE ALLEN	
HAMP SIMKING	
BERRY EDWARDS	WARD EDWARDS INC
JAN GERONON	HOME BUILDERS OF THE LOW COUNTRY
CRAIG JACOBS	ENVIRONMENTAL SERVICES INC
BRIAN MOORE	WPC

MEETING LOCATION: GREENVILLE	
NAME	AFFILIATION
BEN ELLISON	
NIGEL WILLS	
JOHN CHASTAIN	
MICHAEL DEY	
RICHARD RIDDLE	
SCOTT EDGAR	
SUSAN TURNER	EQC APP II
WILLIAM MARTIN	FLETCHER GROUP
JULIAN BARTON	
BENNETT KING	
LARRY K ENNIS	WR GRACE
LANGDON MITCHELL	
GARY WEINREICH	BMW MANUFACTURING LLC
JOE BARROW	FLETCHER GROUP
JIM ZADOROZNY	HANSON
RON KIRBY	DEPT OF PUBLIC WORKS
STEVEN BOYLE	
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Appendix 3
Issues Presented by Meeting Location

Appendix 3: Issues presented by meeting location

This appendix indicates at which meeting a new issue was first raised. It is important to note that if an issue not on the initial list was raised at several meetings, it is noted only at the meeting where it was first raised.

Issues Presented for Initial Discussion

Jurisdiction

- All waters
- Isolated waters only
- Waters not subject to jurisdiction of the Corps of Engineers

Delineation

- Corps of Engineers
- Consultants with Corps verification
- DHEC
- Consultants with DHEC verification

Definitions

- Wetlands - use the federal (Corps) definition and rely on their delineation methodology
- Clarify that Pollution Control Act definition of waters included wetlands
- Mitigation - use the federal definition which includes avoidance and minimization

Activities Subject to Regulation

- Any activity (except those exempt) which can alter waters or wetlands
- Placement of dredged or fill material only

Exemptions

- Identical to federal exemptions in Section 404 of the Clean Water Act
- Selected activities in addition to the federal exemptions

Threshold Acreage of Wetlands Subject to Regulation

- None
- None, but address in a General Permit
- 0.1 acre
- 0.5 acre
- 1 acre
- Greater than 1 acre
- Set percentage of total wetlands on project site

Mitigation

- Required for any impacts including General Permits
- Not required for General Permits
- Required for impacts above a certain acreage threshold
- Sequencing (avoidance and minimization before compensation) required
- Accept money as compensation
- Follow the Interagency (Corps) Standard Operating Procedures (SOP)
- Follow a simplified SOP
- Allow for use of approved mitigation banks

Wetland Master Planning

- Wetlands of a minimum acreage are allowed to be altered without mitigation
- Protection and buffering of remaining wetlands on site is only required mitigation
- Sequencing and normal mitigation procedures used but total mitigation required is reduced

Permit Process

- Individual permits only
- General permits in addition to individual permits
- Joint process with other DHEC permits – simultaneous
- Public Notice of application – minimum 30 day notice
- Notice of Proposed Decision
- Final Permit only with no other public notice
- Appeal process through Administrative Law Judge

Time Frames

- Deemed issued if set time frame is not met
- Return fee if set time frame is not met
- Do not include time applicant is preparing supplemental information in time

Review Criteria

- Sequencing
- Alternatives analysis
- Public need

Compliance and Enforcement

- Allow for inspections
- Provide for penalties
- Provisions same as Pollution Control Act
- Provisions different from PCA

Input from Myrtle Beach Meeting

Jurisdiction

- Not every mudhole
- Nothing beyond Corps' jurisdiction
- Nothing manmade

Delineation

- Corps delineation with DHEC verification/amendment

Definitions

- Consider term other than isolated, e.g., nonjurisdictional

Activities Subject to Regulation

- Discharges into waters of the State
- Forestry activities unless have appropriate controls (Best Management Practices)
- Case-by-case based on function of the wetland
- Include drainage and ditching

Exemptions

- Small wetlands
- Everything
- Maintenance of drainage ditches
- Forestry with proper BMPs
- Activities regulated by the Corps if jurisdiction extends to all waters

Threshold Acreage of Wetlands Subject to Regulation

- 5 acres
- Functions and values should be addressed
- Even with threshold, if high quality allow mitigation credit for not altering
- Must have threshold since classification system won't work

Mitigation

- Don't consider constructed wetlands
- Consider constructed wetlands
- All mitigation should be in-kind

Wetland Master Planning

- Must consider functional assessment
- Mitigation for any impacts
- Should be required of any project
- Opportunity to implement threshold based on percentage of wetlands on site

Permit Process

- Time frame for agency to act
 - 45 – 60 day turnaround
- Fast track simplified projects or minimal impacts
- Different processes for majors and minors
- General permit for small/common impacts

Timeframes

- Alternate action on permit if time frame not met
- Contract review to outside parties if necessary to meet time frames
- Early review for administrative completeness
- Allow PE to “self issue”
- Don’t deem issued if time frame not met

Review Criteria

- Consider watershed impact
- Should mirror 401 criteria
- Specified denial criteria
- Heightened mitigation for after-the-fact permits

Compliance and Enforcement

- Contain citizen suit provision
- Citizen suit with standing

Input from Columbia Meeting

Jurisdiction

- Include impoundments, lagoons, and borrow pits constructed from high ground
- Anything that meets the definition according to the Corps' manual

Delineation

No new issues raised

Definitions

- The term nonjurisdictional would apply to wetlands covered by the federal program but they would be jurisdictional to the State
- Define State jurisdictional wetlands

Activities Subject to Regulation

- Case-by-case based on degree of impact
- Recognize value of nationwide permits

Exemptions

- Exemptions specified in nationwide permits
- None specified, but address in permit review or general permit

Threshold Acreage of Wetlands Subject to Exemption

- Functions and values should be addressed – in context of landscape & watershed
- Thresholds federal program uses in nationwide permit

Mitigation

- Required for impacts over 0.25 or 0.50 acre
- Don't consider mitigation as a form of preservation
- Require verification that mitigation was performed and successful
- Required for permanent, but not temporary, impacts - important for linear projects

Wetland Master Planning

- Consider on a watershed basis

Permit Process

- Notification to permitting agency for unregulated projects

Time Frames

- Combination of early review and deemed issued if set time frame not met
- Certainty in time frames is important

Review Criteria

- Economic analysis

Compliance and Enforcement

- Need to penalize consultants for poor performance
- No compliance/enforcement
- No criminal penalties
- Public access to compliance/enforcement records
- Require permittee accountability through recordkeeping and reporting
- Require bonding

Other issues:

- Incentives to permittees to avoid and minimize impacts
- How to recognize and manage credits

Input from Charleston Meeting

Jurisdiction

- Include impoundments, ditches, lagoons, and borrow pits constructed from high ground unless they have become naturalized
- If it has functions that serve human needs
- If it has functions that serve natural systems
- Jurisdiction should be at the State level, not at local level
- Everything manmade
- Local level jurisdiction should be allowed
- Allow local governments to be more stringent

Delineation

- There should be a standard of training for anyone doing delineation
- Delineation should be science-based
- Keep list of fraudulent or inaccurate delineators and scientists
- Include quality control /assurance – maintain some level of ground truthing
- State does not need multiple layers of agencies doing delineations – if the Corps continues to do delineations, the State should not

Definitions

- Use term geographically isolated instead of isolated wetlands
- Define BMPs such as detention ponds which may be water features but are not jurisdictional
- Anything delineated as a wetland should be regulated

Activities Subject to Regulation

- Clarify that only placement of dredge and fill material is currently regulated by the Corps
- Any activity ever regulated by the Corps per statute, regulation, or guidance
- Government takings of property and buffer areas

Exemptions

- Maintenance of stormwater ponds
- No exemptions that destroy whole class of wetlands
- BMPs
- BMPs adjusted to where they protect biota
- DOT projects
- No DOT projects
- Improvements for waterfowl habitat – provide access also

Threshold Acreage of Wetlands Subject to Exemption

- Review recommendations in Ocean report related to percent impervious surface in a watershed
- Combination of general permit and assessment of functions and values
- Different thresholds for different parts of the State (need a lower threshold in the coastal areas where wetlands are more abundant)

Mitigation

- Enhancement of natural wetlands
- Compensate landowner monetarily
- Evaluate mitigation on a landscape/watershed basis as opposed to project-by-project
- Allow use of buffers which may be required by local jurisdiction
- Require verification that mitigation was successful long term

Wetland Master Planning

- Must include protection of small isolated wetlands
- Should begin at local level
- Height and density variation in developed areas should be allowed by local governments to minimize encroachment into wetlands
- Variation in wetlands impacts should be allowed if necessary for affordable housing projects

Permit Process

- Incorporate mediation into process prior to formal appeal
- Put as much specifics into statute/regulation as possible to offer certainty to permittees
- Have a different permitting process for wetlands in urban growth areas than rural areas
- No difference in permitting process at different project locations
- Joint process with other DHEC permits may not be possible with programs with delegated review

Time Frames

- PE can self-issue - but only with clear and specific performance criteria
- Consistency in time frames between permit reviews when there are multiple permits for one activity
- Ensure Agency has sufficient resources to meet specified time frames
- Time frames should be different depending upon complexity of the projects

Review Criteria

- Simplified review

Compliance and Enforcement

- Any citizen may bring a citizen suit
- Citizen suits should be brought only by affected parties
- Citizen suits should have time limit applicability
- Should include compliance assistance
- Citizen suits should have anti-frivolous provision

Other Issues

- Budget concerns – Can the State afford this?
- Cost to society for lost wetlands

Input from Beaufort Meeting

Jurisdiction

No new issues raised

Delineation

- Allow for appeal of delineation

Definitions

- Need to define certain isolated waters that may not be wetlands
- Need to define any term used that is not defined elsewhere is commonly used regulations
- Need to define any term not specifically defined by the Corps – if the Corps has a definition, use it

Activities Subject to Regulation

No new issues raised

Exemptions

- Small recreational ponds - < 1 acre

Threshold Acreage of Wetlands Subject to Regulation

- A specified threshold of when a permit is required is necessary for consistency – received suggestion that no permit should be required for impacts below 0.5 acre
- Even with a permit threshold there was acceptance by consultants to provide mitigation for impacts below the permit threshold but above a mitigation threshold – received suggestion that anything above 0.1 acre should have compensatory mitigation

Mitigation

- Require mitigation for impacts above 0.1 acre
- Should consider individual property rights
- If follow Corps' SOP, allow waiver of requirement for 25% total mitigation through restoration or creation/enhancement other than buffer enhancement
- Mitigation should not result in a net loss of wetlands
- Consider preservation as compensatory mitigation provided there are “significant” buffers

Wetland Master Planning

- Restrictive covenants should provide contingencies for future roads or utilities that may not be anticipated at the time of permitting

Permit Process

- Current process in the coastal zone works (reference to stormwater permits) – any new program should apply only to areas outside of the coastal zone

Time Frames

- Suggest 15-30 days for administrative completeness review
- Suggest maximum 60 days for technical review

Review Criteria

- Consider alternatives to sequencing – some consultants prefer more flexibility than 404(b)(1) guidelines
- Consider threatened and endangered species but specify whether this would be federal only or include state species of concern
- Consider cultural resources

Compliance and Enforcement

No new issues raised

Other Issues

- Provide as much consistency as possible with existing programs

Input from Greenville Meeting

Jurisdiction

- Local level jurisdiction should be similar to delegated review
- Corps jurisdiction is changing/may change adjacency call regarding isolated vs. contiguous
- Jurisdiction should be dependent upon classification system – jurisdiction taken on best/most valuable and not taken on inferior/least valuable wetlands

Delineation

- Require certification of trained delineators
- Concern that Corps may not require delineation and platting of isolated wetlands

Definitions

No new issues raised

Activities Subject to Regulation

- Consider quality/value/function of wetlands in regulatory scheme
- Balance economic value of project with ecological value of wetlands

Exemptions

- Minimum stream length – perhaps 50 feet
- Time-based exemptions – e.g. remove roads when forestry, mining, or construction project is completed

Threshold Acreage of Wetlands Subject to Regulation

- Don't use any acreage threshold; have enough mitigation banks to easily compensate for any and all losses

Mitigation

- Mitigation banks may be good for some parts of State, but upstate doesn't have any nor are there many good sites for banks (areas needing restoration or enhancement)
- Use pre-law mine areas for wetlands mitigation
- Allow water quality wetlands basins as mitigation
- Include small adjacent wetlands as part of stream bank mitigation bank and use for isolated wetlands, too
- No net loss is hard for upstate; consider other environmental remediation in lieu of wetlands mitigation

Wetland Master Planning

- Experience with new property owner upon transfer of property that was master planned taking exception with the amount of mitigation required

Permit Process

- Need consistency with Corps and State on NWP process to minimize permitting burden on applicant
- Multiple agency process is confusing; need timeliness and need to consider funding for agencies
- Permitting office in upstate would be beneficial
- Different rules for different geographic regions

Time Frames

- Use checklist to ensure administrative completeness and can't go back. No moving targets!
- Suggestion that thirty days is reasonable
- To minimize processing delays, consolidate comments and deficiencies so applicant can address all at one time
- Some think that development world would pay for express service

Review Criteria

- Focus review criteria on water issues – what is being done now – do not expand scope of review

Compliance and Enforcement

- Compliance would be better if rules were more simple, easier to understand, and more regulatory presence in all areas of State
- Cost of not complying should be greater than the cost of complying

Other Issues

- Local zoning and other local issues “force” developers into wetlands; DHEC should work with local governments to make their regulations and ordinances mesh better with environmental rules